

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

LINDA WITHERS
7136 Rhodes Avenue
Affton, MO 63123

Plaintiff,

vs.

LAW OFFICES OF MITCHELL N. KAY, PC
7 Penn Plaza
New York, New York 10001

Defendant.

Case No. 4:10-cv-2115

Division No.

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LINDA WITHERS (Plaintiff), through her attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, LAW OFFICES OF MITCHELL N. KAY, PC, (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."

4. Defendant conducts business in the state of Missouri, and therefore, personal jurisdiction is established.
5. Venue is proper pursuant to 28 *U.S.C. 1391(b)(2)*.

PARTIES

6. Plaintiff is a natural person residing in Affton, St. Louis County, Missouri.
7. Plaintiff is a consumer as that term is defined by 15 *U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 *U.S.C. 1692a(5)*.
8. Defendant is a debt collector as that term is defined by 15 *U.S.C. 1692a(6)*, and sought to collect a consumer debt from Plaintiff.
9. Defendant is a collection agency with a business office in New York, New York.

FACTUAL ALLEGATIONS

10. Defendant communicated with Plaintiff seeking and demanding payment for an alleged debt (Defendant's Reference No.: 84985120-10).
11. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor, CAPITAL ONE BANK (USA), NA (CAP ONE), with an account number ending in 2252 (Defendant's collection letter regarding the CAP ONE debt dated February 9, 2010, is attached as Exhibit A).
12. The debt owed to CAP ONE is for a consumer account (Exhibit A).
13. Plaintiff's alleged debt owed to CAP ONE arises from transactions for personal, family, and household purposes (Exhibit A).
14. On or about February 9, 2010, Defendant sent Plaintiff the letter attached as Exhibit A regarding the debt owed to CAP ONE (Exhibit A).
15. Defendant's letter attached as Exhibit A is printed on Defendant law firm's letterhead.

16. Plaintiff believed Defendant's letter attached as Exhibit A meant that legal action has been, or soon will be, brought against her.
17. Defendant did not intend to take legal action against Plaintiff at the time Defendant mailed the February 9, 2010, letter to Plaintiff, as Defendant's letter states that "At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your [Plaintiff's] account" (Exhibit A).
18. As of the filing of this Complaint, Defendant has not taken any legal action against Plaintiff.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

19. Defendant violated the FDCPA based on the following:
 - a. Defendant violated §1692e of the FDCPA by using false, deceptive, and misleading representations in connection with the collection of any debt;
 - b. Defendant violated §1692e(3) of the FDCPA by falsely representing that the communication is from an attorney;
 - c. Defendant violated §1692e(5) of the FDCPA by threatening to take legal action against Plaintiff even though Defendant has not and does not intend to take such action; and
 - d. Defendant violated §1692e(10) of the FDCPA by using false and deceptive means in an attempt to collect a debt.

WHEREFORE, Plaintiff, LINDA WITHERS, respectfully requests judgment be entered against Defendant, UNDERWOOD LAW FIRM, for the following:

20. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,

21. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,

15 U.S.C. 1692k

22. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

BY:/s/: Adam Maxwell

Adam Maxwell
MO Bar No. 62103
EDMO Bar No. 5249607
Krohn & Moss, Ltd.
10474 Santa Monica blvd.
Suite 401
Los Angeles, CA 90025
Tel: 323-988-2400
Fax: 866-583-3695
amaxwell@consumerlawcenter.com
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, LINDA WITHERS, demands a jury trial in this case.

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF MISSOURI

Plaintiff, LINDA WITHERS, states the following:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, LINDA WITHERS, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Oct 5, 2010
Date

Linda Withers
LINDA WITHERS

VERIFIED COMPLAINT

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EXHIBIT A

Law Offices of Mitchell N. Kay, P.C.
PO Box 9006
Smithtown, NY 11787-9006
84985120M10209100 357000MPPMS1

Call Toll Free:
1-888-647-5721

*** N.Y. Office ***
7 Penn Plaza
New York, NY 10001
*** admitted in New York

February 9, 2010

PERSONAL AND CONFIDENTIAL



LINDA A WITHERS
7136 RHODES AVE
AFFTON MO 63123-1620

Office Hours: Mon-Thurs 8:00am - 9:00pm EST
Friday 8:00am - 5:00pm EST
Saturday 8:00am - 2:00pm EST

Reference Number ▶ 84985120-10

Account Number ▶ xxxxxxxxxxxxxxxx2252	RE ▶ LINDA WITHERS
Balance ▶ [REDACTED]	
Creditor ▶ CAPITAL ONE BANK (USA), N.A.	

Please be advised that your account, as referenced above, is being handled by this office

We have been authorized to offer you the opportunity to settle this account with a lump sum payment, equal to 80% of the balance due - which is [REDACTED]

This offer will be valid as long as our client, referenced above, continues to authorize this program. We are not obligated to renew this offer.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will: Obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

You are invited to visit our website www.lawofmnk.com to resolve this debt privately, or to write to us or to update your personal information. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account.

PLEASE ADDRESS ALL PAYMENTS TO:

Law Offices of Mitchell N. Kay, P.C.
7 Penn Plaza, New York, NY 10001-3995

Notice: Please see reverse side for important information.

Detach Here ▶ Please return bottom portion with payment. ▶ Detach Here ▼

V: (312) 939-2221
F: (312) 939-2741